



Texas Education Agency

15#13464
mjt

1701 NORTH CONGRESS AVENUE

AUSTIN, TEXAS 78701-1494

(512) 463-9734

September 3, 1991

RQ-157

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SEP 04 91

Opinion Committee

Honorable Dan Morales
Texas Attorney General
Attorney General's Office
Supreme Court Building
P. O. Box 12548
Austin, TX 78711-2548

Re: Request for Opinion
§23.023 Texas Education Code

Dear Mr. Morales:

On behalf of at least one affected public school district, I am requesting your opinion of the proper construction to be placed upon §23.023(h) Texas Education Code.

The Texas Education Code language in question appears to create two legislated courses of action in inconsistent terms on the date a local district becomes subject to this section. It states that members of a local board serving on that date shall serve for the remainder of their terms. It also states that at the first election conducted under this section six members shall be elected. As explained in the enclosed letter from McGinnis, Lockridge & Kilgore, counsel to the Austin ISD, four Austin trustees have remaining terms of two years in January 1992. It is in January that the Austin ISD will be required to hold an election under §23.023 Texas Education Code. The facts are such that if six members are elected the Austin ISD will have a ten-member board which is in excess of the nine members authorized in the statute.

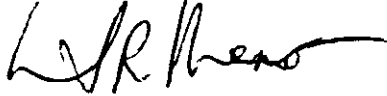
The office of Commissioner of Education and the Central Education Agency does not take a position in this matter. It is a question of pressing and urgent public interest affecting both my official duties and those of the Austin ISD

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trustees. For that reason, I am soliciting your cooperation to expedite this request to enable the district to meet election call deadlines.

Thank you very much.

Sincerely,

A handwritten signature in black ink, appearing to read "L. R. Meno", written over a horizontal line.

Lionel R. Meno
Commissioner of Education

Enclosure

cc: Kevin O'Hanlon

LAW OFFICES
McGINNIS, LOCHRIDGE & KILGORE

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WRITER'S DIRECT DIAL NUMBER:

(512) 495-6011

August 14, 1991

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AUG 14 1991
LEGAL SERVICES

Lionel R. Meno
Commissioner of Education
State of Texas
1701 North Congress Avenue
Austin, Texas 78701

Attn: Kevin O'Hanlon,
General Counsel
Texas Education Agency

RE: Request For Opinion - Section 23.023 of the Texas Education Code

Dear Commissioner Meno:

I am writing to call your attention to an apparent inconsistency in section 23.023 of the Texas Education Code. I ask that you consider requesting an opinion from the Honorable Dan C. Morales, Attorney General for the State of Texas concerning its effect on an election to be held by the Austin Independent School District (AISD) in January of 1992.

AISD is governed by a seven-member Board of Trustees and in January of 1992, three of those trustees must stand for election. Four will still have an additional two years to serve on their current terms in office. In September of 1991, AISD may exceed 64,000 students in average daily attendance. If so, section 23.023 of the Education Code will require AISD to convert to a combination of at-large and single-member districts and a nine-member Board of Trustees.

Section 23.023(h) creates the inconsistency for AISD concerning which I am requesting an opinion. That section states, in language which appears to be mandatory, as follows:

In districts with seven board members on the date the district becomes subject to this section, members of the board serving on that date shall serve for the remainder of their terms, except those choosing to resign.

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Thus, if AISD becomes subject to this section in September of 1991, in January 1992 three trustees must run for reelection but four others will be serving the remainder of their terms pursuant to the language of section 23.023(h) quoted above.

The statute continues, however, as follows:

At the first election at which a district first elects trustees under this section, six members shall be elected - the president, vice-president, and four regular members.

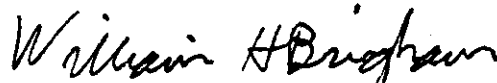
Thus, if AISD follows the literal language of section 23.023(h), after the January 1992 election it will have a ten-member Board of Trustees because four are serving the remainder of their terms and six are elected pursuant to the statute. Section 23.023(a) is unequivocal in its requirement of a nine-member Board of Trustees after the 64,000 average daily attendance figure has been reached.

It appears to me that the intent of the statute is to create a nine-member Board of Trustees. However, I cannot advise the Board with assurance that an election in January, 1992 at which the president, vice president and three regular members are elected will be proper in view of the apparent discrepancy in the State Law.

Please consider section 23.023 and its effect on the Austin Independent School District and other similarly situated districts. I am requesting an opinion concerning the action AISD should take in electing trustees in January 1992 if it becomes subject to section 23.023 because of its passage of the 64,000 average daily attendance milestone.

Thank you for your assistance.

Sincerely yours,



William H. Bingham, Attorney for
Austin Independent School District

WHB/cw

cc: Board of Trustees
Austin Independent School District

Dr. Jim Hensley, Superintendent
Austin Independent School District